

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John A. Nordberg	Sitting Judge if Other than Assigned Judge	Michael T. Mason
CASE NUMBER	01 C 2585	DATE	8/13/2002
CASE TITLE	Peltzer vs. Life Ins. Co. of NA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

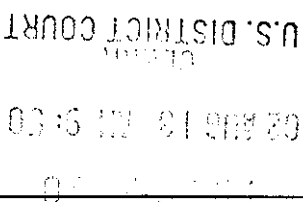
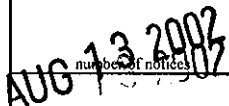






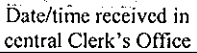
## MOTION:

--

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] For the reasons stated in the attached Memorandum Opinion and Order, plaintiff's motion to compel for other relief pursuant to FRCP 37(a) [23-1] is denied. Status hearing set for 9/10/02 at 9:00 a.m. Enter Memorandum Opinion and Order.

- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;">  </div>	<div style="text-align: center;">  </div>	Document Number
<input type="checkbox"/>	No notices required.		<div style="text-align: center;">  </div>	31
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		<div style="text-align: center;">  </div>	
<input type="checkbox"/>	Notified counsel by telephone.		<div style="text-align: center;">  </div>	
<input type="checkbox"/>	Docketing to mail notices.		<div style="text-align: center;">  </div>	
<input type="checkbox"/>	Mail AO 450 form.		<div style="text-align: center;">  </div>	
<input checked="" type="checkbox"/>	Copy to judge/magistrate judge.	<div style="text-align: center;">  </div>		
<div style="display: flex; justify-content: space-between;"> <div>KF</div> <div>courtroom deputy's initials</div> </div>		<div style="text-align: center;">  </div>		

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DONNA M. PELTZER,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF  
NORTH AMERICA, a subsidiary of  
CIGNA CORPORATION,

Defendants.

No. 01 C 2585

Hon. John A. Nordberg  
Mag. Judge Mason

MEMORANDUM OPINION AND ORDER

POCKETED

AUG 13 2002

Michael T. Mason, United States Magistrate Judge:

The plaintiff in this action under the Employee Retirement Income Security Act, 29 U.S.C. § 1132(a)(1)(B) ("ERISA"), Donna Peltzer, has brought a motion to compel the defendant, Life Insurance Company of North America ("LINA") to produce certain individuals for deposition. LINA has refused, arguing that in an ERISA action such as this one – challenging a decision that an employee is not entitled to benefits – judicial review is limited to the administrative record, and outside discovery such as depositions is not allowed. For the following reasons, we deny the plaintiff's motion.

Peltzer was denied long-term disability ("LTD") benefits under an employee benefits plan in which she participated through her employer. A LINA employee reviewed Peltzer's medical file and made the ultimate decision to deny benefits. LINA contends that the ERISA plan at issue grants it discretion to determine whether benefits under the plan are payable, and thus, the plaintiff can prevail in this action only if she establishes that LINA's actions were arbitrary and capricious. See *Firestone Tire and Rubber Co. v. Bruch*, 489

31

U.S. 101, 114-115 (1989). Further, it argues that because the arbitrary and capricious standard governs this action, our review is limited to that material Peltzer submitted in support of her application for benefits. See *Perlman v. Swiss Bank Corp. Comprehensive Disability Protection Plan*, 195 F.3d 975, 980 (7<sup>th</sup> Cir. 2000). Thus, plaintiff should not be allowed to depose the employees who made the decision to deny her claim.

Peltzer argues that the LINA policy in affect when she first filed her claim in January, 2000 did not contain the discretionary language on which LINA relies, and thus the arbitrary and capricious standard of review does not apply in her case. A review of the LINA policy reveals that it contains fourteen consecutively numbered pages of the plan description, and then continues – on numbered pages fifteen through seventeen – to provide supplemental information required by ERISA. It is this supplemental section that contains the language giving LINA discretion to decide claims. After page seventeen of the supplement, there is a final page which states “Underwritten by: Life Insurance Company of North America, a CIGNA Company.” This page does not have a page number, and at the bottom, it has a footer that says “6/2000”. Peltzer argues that the LINA plan she was given in January, 2000 (the effective date of the policy) only contained the first fourteen pages, and that the “6/2000” at the bottom of the last page of the current plan proves that the supplement was not added until June, 2000. Since the plan in place when she filed her claim did not contain the discretionary language, she argues it does not apply.

LINA contests both Peltzer’s argument that the supplement was added in June, 2000 and her contention that the arbitrary and capricious standard does not apply in this case. First, LINA argues that since the supplement to the plan is consecutively numbered with the rest of the document, it must have taken effect in January, 2000 as well, and that

Peltzer has no evidence to show that the page with the "6/2000" notation is at all related. Quite frankly, neither party's argument regarding the effective date of the supplement is persuasive. The fact is, we cannot tell from the documents submitted to us whether the supplement was included in the plan as of January, 2000, or in June, 2000, or at some other time. And if our decision in this case relied on this fact, we would allow Peltzer to take discovery regarding the supplement's effective date. However, LINA has a second argument, which carries the day.

LINA next argues that, even if the supplement did not become effective until June, 2000, Peltzer's ERISA claim did not accrue until she received the final denial of her benefits, in November, 2000, and that the plan in effect on the date of accrual governs this action. It is true that a cause of action for denial of benefits under ERISA accrues when the benefits are denied, *Daill v. Sheet Metal Workers' Local 73 Pension Fund*, 100 F.3d 62, 65 (7<sup>th</sup> Cir. 1996), and the plan in effect on the date of denial governs the action. *Hackett v. Xerox Corp. Long-Term Disability Income Plan*, 177 F.Supp.2d 803, 813 (N.D.Ill. 2001). However, the circuits are divided about whether the relevant date is the initial denial – which in Peltzer's case was in April, 2000 – or the final denial after exhaustion of administrative appeals. See, e.g., *Salcedo v. John Hancock Mutual Life Insurance Co.*, 38 F.Supp.2d 37, 42-43 (D.Mass. 1998). If Peltzer's claim accrued in April, 2000, there would be a question of fact about when the plan documents first included the supplement and we would order discovery on the issue. Although the Seventh Circuit has not spoken directly on this issue, it has held that a "participant's cause of action to enforce rights under a pension plan accrues upon a 'clear and continuing repudiation of his claim.'" *Daill*, 100 F.3d at 66, citing *Martin v. Construction Laborer's Pension Trust*, 947 F.2d 1381, 1385 (9<sup>th</sup>

Cir. 1991). We find this statement to be consistent with the majority of the circuits, which hold that a cause of action accrues when a claim for benefits is finally denied. See *Salcedo*, 38 F.Supp.2d at 42 (citing cases).

Therefore, Peltzer's claim for denial of ERISA benefits accrued in November, 2000, when her appeal was finally denied, and the plan in place at that time contained the supplement granting LINA discretion. Thus, our review of Peltzer's case is limited to the documents she submitted in support of her claim. Her motion to take additional discovery is denied. It is so ordered.

**ENTER:**

  
**MICHAEL T. MASON**  
**United States Magistrate Judge**

**Dated: August 13, 2002**